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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-205905

DATE: March 22, 1982

MATTER OF: Amray, Inc.

DIGEST:

GAO concludes that the procuring agency should not have rejected the protester's proposal as technically unacceptable. In response to the procuring agency's inquiry, the protester unambiguously clarified the inconsistency in the descriptive literature submitted with its proposal, indicating that the information contained in the price list was correct.

Amray, Inc., protests the award of a contract to International Scientific Instruments, Inc. (ISI), by the Army under request for proposals (RFP) No. DAAD07-81-R-0194 for a scanning electron microscope system. Amray objects to the Army's determination to reject Amray's proposal as technically unacceptable. Amray also objects to the specifications and Amray suggests that ISI's proposal was technically unacceptable and that the Army was predisposed to select ISI's proposed system. We conclude that Amray's proposal was acceptable and sustain the protest. Because of our conclusion, we have no need to consider the other aspects of Amray's protest.

The RFP contained a description of the microscope system being procured and required offerors to submit specification sheets with proposals for every model identified in the proposal. With regard to the energy dispersive x-ray spectrometer subsystem, the RFP provided that the subsystem must be capable of saving or storing the x-ray spectra and its analysis for future use and reference.

To satisfy the spectrometer subsystem requirement, Amray proposed EDAX International Inc. (EDAX) model No. PV9100/40 (model 40). Concerning the model 40,

Amray's proposal contained a cover letter, a price list, and a descriptive brochure. Amray's cover letter stated that Amray's proposal meets or exceeds all specifications and takes no exceptions. The price list specifically mentioned that the required spectrum storage and job mode were standard capabilities of the model 40. The descriptive technical brochure, however, did not mention the storage capability of the model 40 but indicated that storage was available on the EDAX model No. PV9100/60 (model 60) and, by implication, not on the model 40. The possible conflict between the information in the brochure and the price list was a source of concern to the Army.

Further, another offeror proposed the model 60 to satisfy the RFP's spectrometer subsystem requirement. The model 60 was substantially more expensive than the model 40 and, without doubt, the model 60 was acceptable. The Army doubted, therefore, that the model 40 would meet the RFP's storage requirement because the RFP disclosed that low price would be the basis for award; thus, it was not likely that a competitor would propose a more expensive subsystem unless it was necessary.

To clear up the doubt, orally and in writing, the Army asked Amray to clarify the storage capability of the model 40. The Army told Amray that the brochure on the model 40 does not show the storage capability required by the RFP. The Army specifically asked Amray about the model 40's storage capability. Amray responded by stating that the model 40 provides the required storage capability. The Army did not consider Amray's response to be satisfactory and, therefore, the Army determined that Amray's proposal was unacceptable.

Amray contends that the model 40 has the required storage capability, which can be demonstrated on any model 40. In response, the Army argues that whether the model 40 in fact meets the requirement is irrelevant; the issue is whether the Army, at the time of proposal evaluation, had a reasonable basis to reject Amray's proposal. In that regard, the Army notes that the RFP expressly warned offerors that statements, such as "will comply," will not suffice for evaluation purposes.

We note that the RFP provided that, if standard components are proposed, descriptive literature may be

submitted, provided the literature is referenced to the purchase description and the proposal narrates the plan for integration into the system.

Here, Amray proposed standard components and submitted descriptive literature. Based on the information in the price list and the technical brochure, the Army determined that Amray's proposal was technically acceptable, except for the required storage capability. When alerted to the problem, Amray unambiguously assured compliance.

It appears that, with regard to storage capability, if Amray had submitted only the price list, the Army would have found Amray's proposal technically acceptable since the price list expressly stated that the model 40 had the required storage capability. We note that the Army determined that similar statements in ISI's literature satisfied the RFP's requirement for specification sheets to be submitted with the proposal. We also note that the descriptive technical brochure did not expressly state that the model 40 did not have the required storage capability. In our view, however, Amray's unequivocal response to the Army's question clarified Amray's literature by, in effect, advising the Army that the price list information was correct. Thus, we conclude that the Army should have found that Amray's proposal was technically acceptable with regard to the storage capability requirement.

From the record, it appears that after application of Buy American Act price differentials, Amray would have submitted the offer with the low evaluated price, entitling Amray to award. Thus, in view of this conclusion, the other aspects of Amray's protest are academic and will not be considered.

We are not recommending that ISI's contract be terminated because the Army reports that ISI has delivered the system (except for one minor component) and the equipment is currently in use. Thus, corrective action would not be in the Government's best interest.

Protest sustained.

for Milton J. Fowler
Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-205905

March 22, 1982


The Honorable Edward M. Kennedy
United States Senator
2400 John F. Kennedy Federal Building
Government Center
Boston, Massachusetts 02203

Dear Senator Kennedy:

Further reference is made to your letter received January 20, 1982, on behalf of Mr. Kenneth A. Lindberg, Amray, Inc., concerning its protest against the award of a contract to International Scientific Instruments, Inc., by the Army under request for proposals No. DAAD07-81-R-0194 for scanning electron microscope system.

Enclosed is a copy of our decision of today in the matter of Amray, Inc., B-205905, sustaining Amray's protest.

Sincerely yours,

for 
Comptroller General
of the United States

Enclosure